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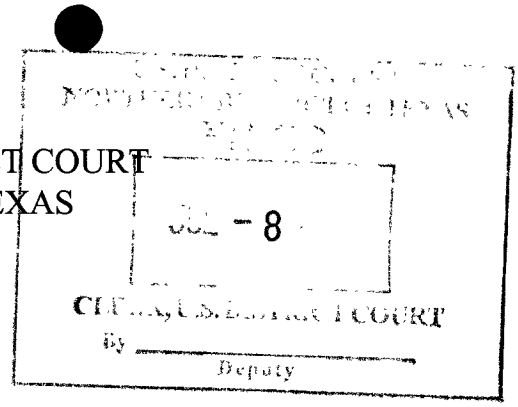

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMA McCORVEY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:03-CV-1340-N
	§	(formerly 3-3690-B and 3-3691-C)
BILL HILL, DALLAS COUNTY	§	
DISTRICT ATTORNEY,	§	
	§	
Defendant.	§	

ORDER DENYING MOTION TO RECONSIDER

Before the Court is Plaintiff Norma McCorvey's Rule 59 Motion for Reconsideration of this Court's Order Denying Rule 60(b) Motion (the "Order").[1] For the reasons stated below, the Court denies the motion for reconsideration.

The Court notes with some surprise that McCorvey first complains that the Order wrongly characterizes her motion as based on newly discovered evidence. *See* Rule 59 Motion ¶ 6. That is simply incorrect. The Order does not refer to newly discovered evidence, Rule 60(b)(2), or the one year time limit applicable to such motions. The Order acknowledges that the Rule 60(b) Motion was filed pursuant to Rule 60(b)(5) and (6) and analyzes it as such.

[1]The Court will refer to McCorvey's original motion under Rule 60(b) as the "Rule 60(b) Motion," and the instant motion for reconsideration as the "Rule 59 Motion."

McCorvey also complains that this Court erred in holding her motion untimely due to the passage of thirty years alone. The Court wishes to clarify that it was not purporting to set out a bright line rule that thirty years is always too long for Rule 60(b) in every case. The Court's holding was that thirty years time, standing alone, was not a reasonable time *in this case*. The Court stands by that holding. McCorvey also ignores the fact that the Court proceeded to make an alternative holding based on a complete review of the facts and circumstances of the case. Order at 7. The Court likewise stands by that holding.

McCorvey cites several cases for the proposition that thirty years is a reasonable time. *See* Rule 59 Motion at 5 n.13; Brief at 4. Most of the cited cases involve consent decrees or other injunctions.[2] None of those cases even discuss the "reasonable time" requirement of Rule 60(b). That is perhaps because of the "universally recognized principle" in injunction cases "that a court has continuing power to modify or vacate a final decree." 11A CHARLES

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[2]The three cases not involving a consent decree or other injunction do not help McCorvey's argument. McCorvey cites *Fed. Deposit Ins. Corp. v. Castle*, 781 F.2d 1101 (5th Cir. 1986), as permitting a Rule 60(b) motion two years after judgment. *See* Rule 59 Motion at 5 n.13. In fact, the Rule 60(b) motion in that case was filed 39 *days* after entry of judgment. *See* 781 F.2d at 1103 n.1. McCorvey also cites *Charter Township of Muskegon v. City of Muskegon*, 303 F.3d 755 (6th Cir. 2002), as a case in which the "Court of Appeals for the Sixth Circuit recently reversed a district court which held that twenty-eight years was untimely." Brief at 4. While literally true, that description is misleading. The court of appeals reversed the district court on its finding of no subject matter jurisdiction and remanded the case for further proceedings; the majority did not address the district court's alternative finding that the motion was untimely, which the majority characterized as dicta. *Id.* at 758. As the concurring and dissenting opinion pointed out, the remand was an exercise in futility as the district court had already indicated the motion was untimely. *Id.* at 764. *United States v. Karahalias*, 205 F.2d 331 (2d Cir. 1953), was a naturalization case on unusual facts involving World War II, and is factually distinguishable.

ALLEN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2961, at 391 (2d ed. 1995). This case, of course, does not involve an injunction. *See Roe v. Wade*, 314 F. Supp. 1217, 1224 (N.D. Tex. 1970); *Roe v. Wade*, 410 U.S. 113, 166 (1973). Accordingly, those cases dealing with a court's continuing jurisdiction over its own injunctions are inapposite.

McCorvey also argues that the Court's ruling on her Rule 60(b) Motion deprived her of due process. The Court finds that unpersuasive. She had notice of the timeliness requirement from the face of Rule 60(b), and she had an opportunity to be heard on timeliness in her motion. She simply failed to address the issue.[3] *See Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1409 n.8 (5th Cir. 1994) ("[I]n making the 60(b)(6) motions, and concerning the key issue of timeliness, the Liljebergs were obviously required, but failed, to support their motions with affidavits or other sworn proof that they did not know of [the factual basis for their motion] prior to July 23, 1993."). As stated in the Order, McCorvey failed to carry her burden in that regard. Order at 7. Moreover, even considering the additional materials filed with her Rule 59 Motion, the Court finds that McCorvey has still failed to carry her burden to show she filed her Rule 60(b) Motion within a reasonable time.[4]

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[3]Although in McCorvey's Rule 59 Motion, she attempts to depict her Rule 60(b) Motion as discussing timeliness, it does not. *See* Order at 7 n.9.

[4]Most of the case law upon which she relies to show a changed legal environment was decided long before 2003; much, though not all, of the scientific literature she cites was published long before 2003; and she fails to explain why the collection of affidavit evidence

Finally, McCorvey disagrees with this Court's holding that a ruling on timeliness of her Rule 60(b) Motion did not require the full three judge Court. The Court stands by its analysis in the Order.

Accordingly, McCorvey's Rule 59 Motion is DENIED.

SIGNED this 8th day of July, 2003.

David C. Godbey
United States District Judge

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could not have been done long before 2003. She does explain, historically, why it *did not* occur earlier, but that is not the same as showing it *could not* have been done earlier.